IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs February 20, 2007

STATE OF TENNESSEE v. RICHARD ADAM HANNAH, LARRY DARNELL PENN, and TRACY LEE RAY

Direct Appeal from the Criminal Court for Hamilton County
Nos. 254484, 254485, 254486, & 254487 Rebecca J. Stern, Judge

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No. E2005-02833-CCA-R3-CD - Filed June 6, 2007

The Hamilton County Grand Jury indicted defendants Richard Adam Hannah, Larry Darnell Penn, and Tracy Lee Ray, for possession of more than .5 grams of cocaine with intent to sell or deliver and possession of marijuana with intent to sell or deliver. Defendant Hannah was also charged with driving without a driver's license. Defendant Penn and Defendant Ray filed a motion to suppress the evidence seized as a result of the search of their car following an unconstitutional stop. At the subsequent hearing, without objection of the State and with the trial court's acquiescence, Defendant Hannah orally joined the motion. The trial court granted the motion to suppress and dismissed the State's case. This appeal followed. On appeal, the State argues that the trial court erred in sustaining the motion to suppress evidence because the initial stop of the vehicle was legal. After a thorough review of the record, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and ALAN E. GLENN, JJ., joined.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie Price, Assistant Attorney General; William H. Cox, III, District Attorney General; and Boyd Patterson, Assistant District Attorney, for the appellant, the State of Tennessee.

Brandon D. Raulston, Chattanooga, Tennessee, for the appellee, Richard Adam Hannah; Myrlene R. Marsa, Chattanooga, Tennessee, for the appellee, Larry Darnell Penn; and David R. Barrow, Chattanooga, Tennessee, for the appellee, Tracy Lee Ray.

OPINION

I. Background

The following evidence was presented at the hearing on the motion to suppress: On May 11, 2005, just before 1:00 a.m., Officer Joseph Shaw was on patrol when he observed a dark-colored Altima traveling southbound on Market Street in Chattanooga. At the intersection of Main and Market Street, Officer Shaw got behind the Altima and paced it at a speed of 20 miles per hour. At one point, the car was traveling at a speed of 25 miles per hour. The speed limit on Market Street was posted as 35 miles per hour. There was no minimum speed limit posted. According to Officer Shaw, most people travel Market Street at a rate of 45 miles per hour. The Altima was traveling in the left lane so traffic was forced to pass the vehicle in the right lane. Traffic was never forced to a complete halt.

After following the Altima for approximately 15 blocks and traveling the same speed as the vehicle, Officer Shaw initiated a stop of the vehicle. Defendant Richard Hannah was driving the Altima. Officer Shaw asked Defendant Hannah to get out of the car and show his driver's license. Defendant Hannah was unable to produce a driver's license or any form of identification. Officer Shaw noticed that Defendant Hannah's speech was "very mumbled." He further noted that Defendant Hannah's eyes were "glassy" and his eyelids were "very heavy." Officer Shaw said that Defendant Hannah appeared to be intoxicated, but he could not smell alcohol on his breath.

At this point in the testimony during the hearing, the trial court stopped the testimony finding that there were problems with Officer Shaw's initial stop of the vehicle. Specifically, the trial court found that Officer Shaw had no reasonable and articulable suspicion that the passengers in the vehicle had committed a crime, were in the process of committing a crime, or were about to commit a crime. Because the initial stop of the vehicle was illegal, the trial court found that the subsequent search of the vehicle was likewise illegal. Thus, all evidence recovered as a result of the search was suppressed. The indictment was subsequently dismissed by the trial court.

II. Analysis

On appeal, the State first argues that the case should be remanded to the trial court because the trial court failed to state its findings for the record and "merely sustained the motion to suppress without any clear indication of the basis for doing so." We agree with the State that "[w]hen factual issues are involved in deciding a motion, the court shall state its essential findings on the record." Tenn. R. Crim. P. 12(e). However, although the trial court made no written findings of fact in its order granting the defendants' motion to suppress, the court made sufficient oral findings of fact during the hearing on the motion to suppress upon which to base our review.

Only one witness testified at the hearing on the motion to suppress. No evidence was introduced to contradict the testimony of the witness. From the trial court's comments, the trial judge implicitly found that the only reason Officer Shaw stopped the Altima was because the vehicle

was traveling 15 miles per hour below the speed limit and about one-half the average speed of other vehicles which were traveling about 10 miles per hour over the posted maximum speed limit. Since it was a four-lane road, other vehicles were able to drive around the Altima. Thus, the trial court found that other traffic was not "impeded."

The State contends that the trial court erred in sustaining the motion to suppress because the evidence at the hearing "clearly" preponderates against the trial court's findings. In support of its contention, the State cites Officer Shaw's testimony that the defendants' vehicle was traveling at an "unusually slow rate of speed," and "most of the other vehicles on the road were traveling at double the vehicle's speed." The State then notes that the prosecution indicated that such a slow rate of speed violated Tennessee Code Annotated section 55-18-154(a). That statute states that "no person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic, except when reduced speed is necessary for the safe operation of the vehicle or compliance with the law." T.C.A. § 55-8-154(a). The State argues that the defendants presented no evidence as to why they were traveling at a reduced speed or why the reduced speed was not a violation of the statute creating a reasonable suspicion for Officer Shaw to stop the vehicle. As noted above, the trial court found that the defendants were not impeding traffic as contemplated by the statute since other traffic was able to successfully pass the defendants' vehicle using the right hand lane. The trial court explained that "[i]mpeding would mean . . . coming to a stop and having to wait for some unreasonable amount of time and not being able to go around him." The court found that because the defendants were not violating the statute, Officer Shaw did not have reasonable suspicion to believe the defendants were committing a crime justifying a stop of the vehicle.

The findings of fact made by the trial court at the hearing on a motion to suppress are binding upon this court unless the evidence contained in the record preponderates against them. *State v. Ross*, 49 S.W.3d 833, 839 (Tenn. 2001). The trial court, as the trier of fact, is able to assess the credibility of the witnesses, determine the weight and value to be afforded the evidence and resolve any conflicts in the evidence. *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). Accordingly, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." *Id*. The prevailing party is entitled to the strongest legitimate view of the evidence and all reasonable inferences drawn from that evidence. *State v. Hicks*, 55 S.W.3d 515, 521 (Tenn. 2001). However, this court is not bound by the trial court's conclusions of law. *State v. Simpson*, 968 S.W.2d 776, 779 (Tenn. 1998). The application of the law to the facts found by the trial court are questions of law that this court reviews *de novo*. *State v. Daniel*, 12 S.W.3d 420, 423 (Tenn. 2000). We note that "in evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, appellate courts may consider the proof adduced both at the suppression hearing and at trial." *State v. Henning*, 975 S.W.2d 290, 299 (Tenn. 1998).

Both the state and federal constitutions protect individuals from unreasonable searches and seizures. *See* U.S. Const. amend. IV; Tenn. Const. art. I, § 7. Therefore, a search or seizure conducted without a warrant is presumed unreasonable and any evidence discovered as a result of such a search is subject to suppression. *See Coolidge v. New Hampshire*, 403 U.S. 443, 454-55, 91 S. Ct. 2022, 2032 (1971); *State v. Bridges*, 963 S.W.2d 487, 490 (Tenn. 1997). However, the

evidence will not be suppressed if the state proves that the warrantless search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement. *State v. Binette*, 33 S.W.3d 215, 218 (Tenn. 2000).

One of these narrow exceptions occurs when a police officer initiates an investigatory stop based upon specific and articulable facts that the defendant has either committed a criminal offense or is about to commit a criminal offense. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968); *Binette*, 33 S.W.3d at 218. This narrow exception has been extended to the investigatory stop of vehicles. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 881, 95 S. Ct. 2574, 2580 (1975); *State v. Watkins*, 827 S.W.2d 293, 294 (Tenn. 1992). In determining whether reasonable suspicion existed for the stop, a court must consider the totality of the circumstances. *Binette*, 33 S.W.3d at 218. A law enforcement officer must have probable cause or reasonable suspicion supported by specific and articulable facts to believe that an offense has been or is about to be committed in order to stop a vehicle. *State v. Randolph*, 74 S.W.3d 330, 334 (Tenn. 2002). In determining if the reasonable suspicion exists, an appellate court must look to the totality of the circumstances and "the officer of course, must be able to articulate something more than an inchoate and unparticularized suspicion or hunch." *State v. Yeargan*, 958 S.W.2d 626, 632 (Tenn. 1997) (quoting *United States v. Sokolow*, 490 U.S.1, 7-8, 109 S. Ct. 1581, 1585 (1989)). This includes, but is not limited to, objective observations, information obtained from other police officers or agencies, information obtained from citizens, and the pattern of operation of certain offenders. *State v. Watkins*, 827 S.W.2d 293, 294 (Tenn. 1992) (citing *United States v. Cortez*, 449 U.S. 411, 418, 101 S. Ct. 690, 695 (1981)). A court must also consider the rational inferences and deductions that a trained police officer may draw from the facts and circumstances known to him. *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880. A vehicle stop is constitutional if an officer has probable cause or reasonable suspicion to believe that a traffic violation has occurred. *State v. Vineyard*, 958 S.W.3d 730, 734 (Tenn. 1997). In determining whether a vehicle stop was constitutionally justified, we look not at the subjective motivation of the stopping officer, but at whether there was in fact probable cause to believe a violation had occurred. *See Whren v. United States*, 517 U.S. 806, 813, 112 S. Ct. 1769, 1774 (1996).

Viewing the totality of the circumstances, Officer Shaw did not have a reasonable suspicion, supported by specific and articulable facts, to believe the defendants had committed a crime or were about to commit a crime when he initiated the traffic stop. Prior to stopping the defendants' vehicle, the officer did not observe any traffic violations, such as running a stop sign or red light, or weaving across lanes into oncoming traffic. Neither did he witness any equipment failures, such as a non-working headlight or taillight. Nor was there any evidence that the vehicle lacked tags or had expired tags. Officer Shaw did not testify that it was his belief that the individuals in the car were perpetrating a crime or had just committed a crime. The proof showed only that Officer Shaw observed the defendants' vehicle traveling within the bounds of the speed limit while other vehicles traveled ten miles per hour in excess of the speed limit. There was no minimum speed limit posted on the road. Officer Shaw testified that traffic was able to pass the defendants' vehicle in the right hand lane rather than being forced to stop by the defendants' reduced speed. This is not evidence

sufficient to support a finding of probable cause or reasonable suspicion sufficient to stop the vehicle. *See Yeargan*, 958 S.W.2d at 632.

Furthermore, we agree with the trial court's interpretation of Tennessee Code Annotated section 55-8-154(a). When construing a statute, we must give effect to the ordinary meaning of the words used in the statute, and we must presume that each word used was purposely chosen by the legislature to convey a specific meaning. *State v. Denton*, 149 S.W.3d 1, 17 (Tenn. 2004) (citing *State v. Jennings*, 130 S.W.3d 43, 46 (Tenn. 2004)). Webster's College Dictionary defines "impede" as "to retard in movement or progress by means of obstacles or hindrances; obstruct; hinder." *Webster's College Dictionary* 674 (1990). To obstruct something is "to hinder, interrupt or delay the passage, progress, or course of." *Webster's College Dictionary* 935 (1990). In light of these definitions, we cannot conclude that the defendants' reduced rate of speed was impeding the normal and reasonable speed of traffic as contemplated by the statute. Consequently, there was no traffic violation justifying a stop of the vehicle. We must therefore find that the proof at the hearing on the motion to suppress does not preponderate against the trial court's finding that the stop of the defendants' vehicle was constitutionally improper. As such, the trial court properly granted the motion to suppress. Accordingly, the State is not entitled to relief in this appeal.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed.

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THOMAS T. WOODALL, JUDGE